

Spotlight on 91

Public consultation on Part 91 is nearing conclusion. Here are answers to some of the most common questions about proposed general operating and flight rules.

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THE NEW Part 91 General Operating and Flight Rules are almost finished following the Notice of Proposed Rule Making (NPRM) process completed in mid 2002. A Summary of Responses (SOR) will be released shortly with an amended copy of the proposed rules. Here we examine some of the common questions that arose from the NPRM process.

What formed the basis of Part 91?

No particular rule set formed the basis for the layout of Part 91. Some rules have almost exactly the same content as the Federal Aviation Regulation (FARs). Most of the rules come from existing Civil Aviation Regulations (CARs) and Civil Aviation Orders (CAOs). Neither the Joint Aviation Authorities (JAA) nor the US Federal Aviation Administration (FAA) rule sets were used as a template for Part 91.

The International Civil Aviation Organization (ICAO) publishes Standards and Recommended Practices (SARPs). Where possible, member states, including Australia, follow those guidelines. This promotes uniformity.

Where possible, CASA followed the ICAO SARPs. These have formed a test for the current rule set and, where Australia complies, the ICAO standard has been used as the starting point for regulations. Previous ICAO audits have revealed that Australia already has a high level of compliance with ICAO SARPs, so there are only minor changes to the current rule set. In cases in which there is no ICAO standard, the FARs have been used to develop the equivalent Australian standard.

CASA explored several methods for developing the rule set. One approach, the method adopted by Indonesia, was to pick up the FARs as direct copies. This was considered unworkable here. Laws in the US are required to only state the intent of the rule. In Australia, the law must be stated exactly. As a minimum, all the rules would need to be redrafted to meet the Australian standard at law.

The alternative system used by the JAA was also examined. The JAA leaves the administration of general aviation to its member states, so its rule set did not present a neat package. The European provisions are not suited to Australian general aviation.

With these two rule sets discounted, CASA elected to develop its own rule set which harmonised with ICAO and, where possible, the rule sets of the major aviation nations. In cases of conflict between rule sets, the current Australian rule has generally been maintained.

What is different in Part 91 compared with Australia's present rule set?

Part 91 is a consolidation of Australia's current rule set, which is divided between CARs and CAOs. These documents evolved over the life of civil aviation in Australia, so the rules are dispersed throughout them. Where possible, the rules have now been divided up according to topic.

There are 13 completely new rules. Following is a list of the new provisions with a brief explanation (in italics):

91.050: Applicability.

States what the Part is all about.

91.010: Definitions for Part 91.

Lists definitions specific to Part 91.

91.015: Reference to an aircraft's engine. *Distinguishes between engines for propulsion and auxiliary power units.*

91.020: Reference to aircraft's pilot in command.

Defines who is in command.

91.025: Defences available to pilot in command.

Provides defences for actions.

91.300: Simulated failure of flight instruments in IMC or at night during training. *Bans simulated failure of certain instruments at night.*

91.305: Simulation of engine emergencies in IMC or at night during training. *Bans some simulated engine emergencies at night.*

91.525: Variations to the load sheet. *Allows omission to the requirements for a load sheet listed in 91.520.*

91.530: Last-minute changes to the load sheet.

Allows a system for last minute variation to reflect loading differences between the actual load and the load sheet load.

91.535: Load sheets prepared in computerised systems.

Allows the use of computers for generating load sheets

91.540: Onboard weight and balance systems.

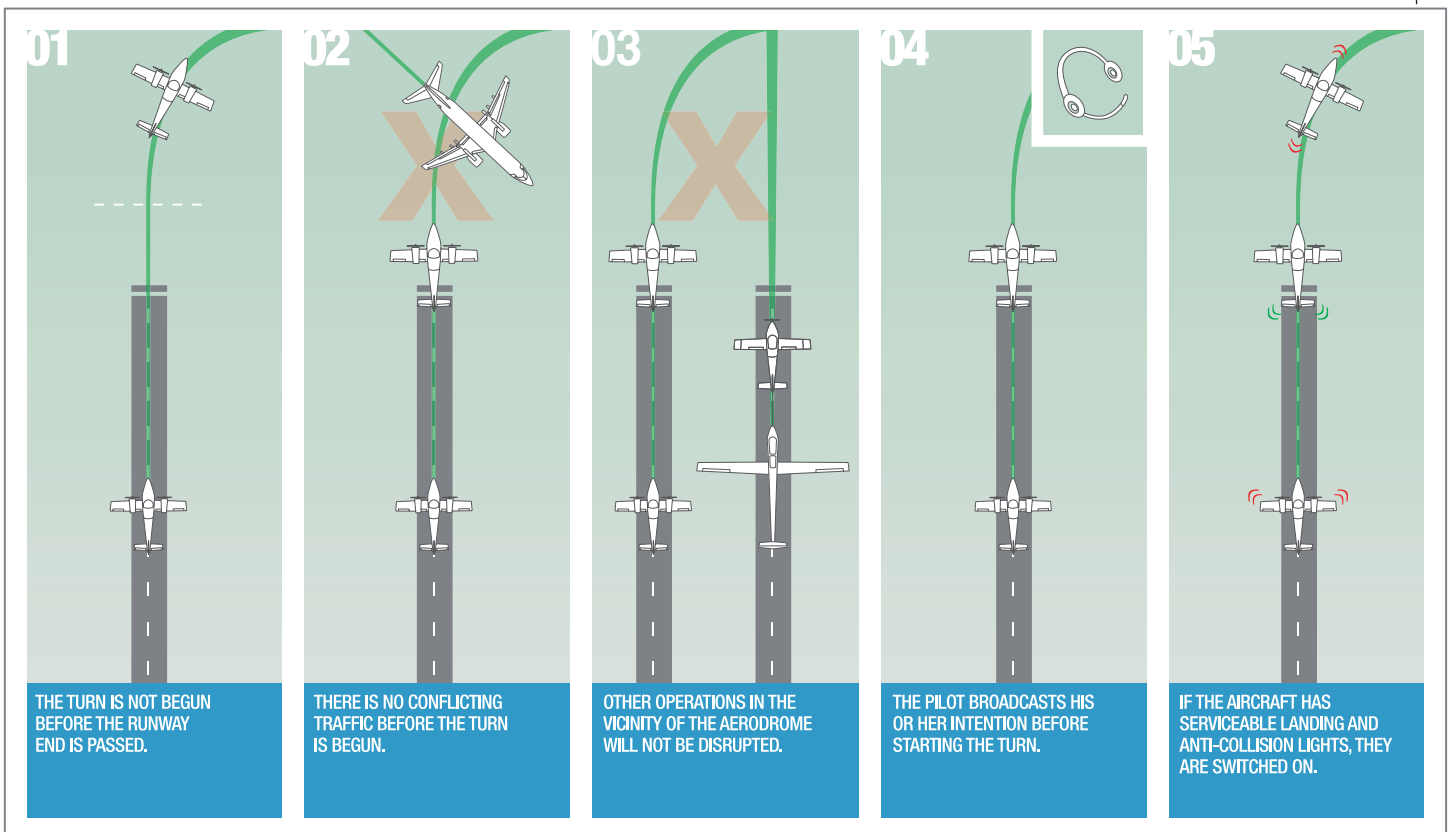
Allows the use of on board weighing systems to determine the aircraft load.

91.545: Loading an aircraft from a document other than a load sheet.

Allows the use of the loading system.

91.595: Instrument departure and approach systems.

Requires that the aircraft be suitably equipped



for instrument flight if it is intended to be flown in IMC.

91.1020: Recurrent training and checking requirements – flight crew for large aeroplanes.

Requires training and checking for large aeroplanes.

The other rules are within CASA's current rule set. The draft SOR, soon to be posted on the CASA website, details rule by rule, the current rule and the related international base code.

Are the rules written in plain language?

One of the criticisms made during the consultation process was that the rules were not presented in plain language. "Plain language" is a subjective concept. It is often used as a euphemism for readability. There is no Australian Standard for legal definitions of plain language. The US Insurance Plain Language Act requires language in insurance policies to meet a Flesch reading ease score of 45. A lower score is permitted if the language used makes the policy more concise.

The new Part 91 has a Flesch readability score of 41.1, making it one of the easiest to read rule sets. Its score compares with the

1998 Civil Aviation Regulations, which have a readability of only 22.5, and with the FAR Part 91, with a score of 31.3. Australia's Attorney General's Office of Legal Drafting writes legislation to the Government Style Manual and its Plain English requirements.

What were the results of the NPRM?

There were 74 NPRM responses comprising 217 different comments. Seven, or 10 per cent, of respondents indicated that the proposal was not acceptable under any circumstances. Six (8 per cent) accepted the document without change.

The issue of strict liability attached to many of the regulations provoked 34 separate comments. Offences in CASR Part 91 are being drafted in accordance with the Commonwealth's Criminal law policies. The Attorney General's Department considers the content of each offence and advises CASA on whether the offence should be treated as a strict liability offence. This approach is consistent with the treatment of offences in other regulatory legislation. A process has been undertaken in the past few years to align all existing legislation with these policies.

The complete SOR quotes, where

possible, each comment verbatim. Otherwise, a summary of the response appears. Responses that are almost identical are summarised.

What are the real benefits of Part 91?

Most importantly, Part 91 consolidates the basic rules GA pilots need for normal operation. It is more readable and more closely aligned with rules overseas.

Part 91 is substantially smaller than all of the rules it replaces. The rule set is modern compared with the FARs and is closely aligned with the New Zealand Part 91.

Some provisions that pilots have lived with for many years have been updated. For example, in rule 91.220, aircraft may operate contrary to the standard circuit pattern or conduct a straight in approach if they meet certain requirements. Generally, the pilot of the aircraft must transmit their intentions. Aircraft lights must be on. A straight in approach or contra pattern must not disrupt other aerodrome operations (see diagram above).

For complete information on Part 91, visit www.casa.gov.au. To contact the project manager, call Allister Polkinghorne on 131 757.